PP v. MOHAMAD ALRAZIQ RAMLI (NO 2)

HIGH COURT MALAYA, KUALA LUMPUR
ASLAM ZAINUDDIN JC
[CASE NO: WA-45-13-10-2020]
25 AUGUST 2021

CRIMINAL PROCEDURE: *Appeal – Notice of appeal – Whether appeal lodged within time prescribed by law – Whether prosecution could file appeal out of time by relying on Direction issued by Chief Justice – Whether appeal from decision of High Court in criminal matter a statutory right – Whether Practice Direction could override statutory provision – Legislative power and intention of Parliament – Courts of Judicature Act 1964, s. 51 – Federal Constitution, art. 66*

The accused was charged for two offences, the first offence under s. 39B of the Dangerous Drugs Act 1952 ('DDA') and the second offence under s. 3(1)(a) of the Dangerous Drugs (Forfeiture of Property) Act 1988. On 12 July 2021, the court acquitted and discharged the accused on the second charge before proceeding to hear the defence case on the first charge which the court had reduced to s. 39A(2) read together with s. 6 of the DDA. The Deputy Public Prosecutor ('DPP'), being dissatisfied, lodged an appeal against the court's decision only on 13 August 2021, which at first blush made it obvious that the appeal was out of time by two weeks. However, the Public Prosecutor referred to paras. 4 and 5(b) of Arahan Ketua Hakim Negara Bil 8 Tahun 2021 (Chief Justice's Direction No 8 of 2021) ('Arahan') to justify their late filing of the notice of appeal. The Arahan gets its authority from s. 50 of the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (Covid-19) Act 2020. The issue that arose was whether this appeal had been lodged within the time prescribed by law or not*, id est*, whether this appeal was competent.

Held (appeal filed out of time):

(1) The question arose as to whether the said Arahan could be read to include the waiver of the time provided to lodge appeals in criminal cases. In this court's view, this could not be so. It is trite that an appeal from a decision of the High Court in a criminal matter is a statutory right provided in s. 51 of the Courts of Judicature Act 1964 ('CJA'). The CJA is a statute and not a piece of subsidiary legislation like the Rules of Court 2012. Therefore, when s. 17(8) of the CJA refers to 'rules of court', it can only mean subsidiary legislation like the Rules of Court 2012 and not the CJA. To read the said provision otherwise would result in provisions of statutes being amended by a mere stroke of the pen and ignoring the provisions of art. 66 of the Federal Constitution on the legislative power of Parliament. This cannot be the intention of the August House when it passed the Covid-19 Act. Furthermore, it is a well

A settled principle that a practice direction cannot override a statutory provision. *Ergo*, the DPP's reliance on the said Arahan to justify the delayed lodging of the appeal was misplaced. All was not lost, however, as the DPP could still make an application under s. 56 of the CJA for an extension of time to lodge the appeal and give reasons for the delay
B in doing so. (paras 8 & 9)

Case(s) referred to:
Lorraine Phylis Cohen & Anor v. PP [1989] 2 CLJ 131; [1989] 1 CLJ (Rep) 84 SC ***(refd)***
Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd [2002] 1 CLJ 645 FC ***(refd)***
C *Nathan v. PP [1972] 1 LNS 99 HC* ***(refd)***
PP v. Mohamad Alraziq Ramli [2021] 1 LNS 726 HC ***(refd)***
Zaidi Mohd Zain & Anor v. PP [2021] 6 CLJ 905 HC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 17(8), 51, 56
D Dangerous Drugs Act 1952, ss. 6, 39A(2), 39B
Dangerous Drugs (Forfeiture of Property) Act 1988, s. 3(1)(a)
Federal Constitution, art. 66
Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020, s. 50

For the appellant - Izalina Abdullah; DPP
E *For the respondent - Hanif Hashim; M/s Hanif & Co*

Reported by Suhainah Wahiduddin

JUDGMENT

F **Aslam Zainuddin JC:**

Can The Prosecution In A Criminal Case File An Appeal Out Of Time By Relying On A Direction Issued By The Right Honourable Chief Justice?

[1] In this case, the accused was charged for two offences, the first offence
G under s. 39B of the Dangerous Drugs Act 1952 ("DDA") and the second offence under s. 3(1)(a) of the Dangerous Drugs (Forfeiture of Property) Act 1988. On 12 July 2021, I acquitted and discharged the accused on the second charge before proceeding to hear the defence case on the first charge which I had reduced to s. 39A(2) read together with s. 6 of the DDA. The Deputy
H Public Prosecutor ("DPP") being dissatisfied, lodged an appeal against my decision only on 13 August 2021. For the purposes of this judgment, we are only concerned with the second charge. At the time of releasing this judgment, the case against the accused on the first charge is still ongoing at the defence stage. To know what happened earlier in this case, see
I *PP v. Mohamad Alraziq Ramli* [2021] 1 LNS 726; [2021] MLJU 893.

[2] The second charge against the accused is as follows:

> Bahawa kamu, pada 26.03.2019 jam lebih kurang 10.15 malam, di tepi jalan kawasan belakang pusat membeli belah "Quill City Mall", Jalan Sultan Ismail, dalam daerah Dang Wangi, dalam Wilayah Persekutuan Kuala Lumpur, didapati telah menggunakan harta iaitu sebuah kenderaan bermotor jenis Mitsubishi Lancer warna maroon no. Pendaftaran WTF 1013 dengan niat hendak menjalankan perbuatan aktiviti pengedaran dadah berbahaya yang menjadi satu kesalahan terjadual di bawah Akta Dadah Berbahaya (Perlucuthakan Harta) 1988. Oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 3(1)(a) Akta itu dan boleh dihukum di bawah seksyen yang sama.

[3] In this judgment, I will not go into the merits of the case lest it be said later on appeal after the end of the defence case for the first charge that I have written two judgments in this case, see the Supreme Court case of *Lorraine Phylis Cohen & Anor v. PP* [1989] 2 CLJ 131; [1989] 1 CLJ (Rep) 84; [1989] 2 MLJ 288 and the case of *Nathan v. PP* [1972] 1 LNS 99; [1972] 2 MLJ 101, rather I will only touch on the issue whether this appeal has been lodged within the time prescribed by law or not, *id est* whether this appeal is competent or not, and I proceed to do so as follows.

The Law

[4] In the Courts of Judicature Act 1964 (Act 91) ("CJA") it is provided in s. 51 that:

> Notice of appeal
>
> 51. (1) Every appeal shall be by notice in writing which shall be filed with the Registrar of the Court from which the appeal lies at the place where the decision appealed against was given within **fourteen days** after the date of the decision.

[5] It is to be noted that my decision was delivered on 12 July 2021 and the appeal was lodged on 13 August 2021, therefore at first blush, it is obvious that the appeal seems to be out of time by two weeks. But interestingly, the Public Prosecutor referred to paras. 4 and 5(b) of Arahan Ketua Hakim Negara Bil 8 Tahun 2021 (Chief Justice's Direction No 8 of 2021) dated 31 May 2021 to justify their late filing of the notice of appeal. Now what does the said Arahan say?

> Arahan Ketua Hakim Negara
>
> Bilangan 8 Tahun 2021
>
> Pengecualian Terhadap Pemakaian Peruntukan Undang-undang Berhubung Dengan Urusan Mahkamah Di Seluruh Malaysia
>
> PADA menjalankan kuasa yang diberikan oleh seksyen 16A Akta Mahkamah Kehakiman 1964 [Akta 91], subseksyen 17(8) Akta 91, seksyen 3A Akta Mahkamah Rendah 1948 [Akta 92] dan subseksyen 3(7) Akta Kaedah-Kaedah Mahkamah Rendah 1955 [Akta 55] yang diubah suai

melalui Akta Langkah-Langkah Sementara bagi Mengurangkan Kesan Penyakit Koronavirus 2019 [Akta 829], demi kepentingan pelaksanaan keadilan, kesejahteraan awam, keselamatan awam, kesihatan atau kesusilaan awam, saya mengeluarkan Arahan ini bagi memperuntukkan pengecualian terhadap pemakaian peruntukan undang-undang berhubung dengan urusan Mahkamah di seluruh Malaysia seperti yang berikut:

Pengecualian Terhadap Pemakaian Peruntukan Undang-undang Berhubung Dengan Urusan Mahkamah

A. Pengecualian Terhadap Pematuhan Kehendak Tempoh Masa

4. Pihak-pihak adalah dikecualikan daripada mematuhi kehendak tempoh masa sebagaimana yang diperuntukkan di bawah undang-undang berhubung dengan urusan Mahkamah di seluruh Malaysia dan bagi maksud ini, pihak-pihak tidak perlu memohon bagi mendapatkan perintah untuk pelanjutan masa daripada Mahkamah.

5. Pengecualian daripada pematuhan kehendak tempoh masa adalah merangkumi hal perkara yang berikut:

(a) ...

(b) pemfailan notis rayuan;

(c) ...

(d) ...

(e) ...

(f) ...

[6] On 13 July 2021, an amendment to the above Direction was issued and the relevant part is as follows:

(c) walau apa pun yang diperuntukkan dalam Arahan Ketua Hakim Negara Bilangan 8 Tahun 2021, Mahkamah mempunyai budi bicara untuk memutuskan mengenai pemakaian Arahan tersebut tertakluk kepada arahan yang dikeluarkan oleh Kerajaan dari semasa ke semasa berkaitan dengan kawalan pergerakan termasuk pengoperasian firma guaman, perkhidmatan Pesuruhjaya Sumpah, mobiliti pihak-pihak dan apa-apa sebab lain yang difikirkan wajar oleh Mahkamah.

[7] The above Arahan gets its authority or in Bahasa Melayu "punca kuasa" from s. 50 of the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 (Act 829) which is as follows:

S. 50

The Courts of Judicature Act 1964 is modified by inserting after s. 16 the following section:

16A. General power of the Chief Justice to issue direction

The Chief Justice may, if the Chief Justice is of the opinion that the circumstances warrant and it is necessary in the interest of the

dispensation of justice, public safety, public security, public health or propriety or for other sufficient reason to do so, issue any direction relating to the business of the Court as may be necessary.

Section 51

The Courts of Judicature Act 1964 is modified in section 17:

(a) ...

(b) ...

(c) by inserting after subsection (7) the following subsection:

(8) The Chief Justice may, if the Chief Justice is of the opinion that the circumstances warrant and it is necessary in the interest of the dispensation of justice, public safety, public security, public health or propriety or for other sufficient reason to do so, *modify any provision of the rules of court or suspend the application* of such rules of court as is necessary for doing complete justice in any cause or matter pending before the Courts and to ensure that the administration of justice is carried out.

[8] *Ergo* this raises the question whether the said Arahan can be read to include the waiver of the time provided to lodge appeals in criminal cases. In my considered view, this cannot be so. It is trite that an appeal from a decision of the High Court in a criminal matter is a statutory right provided in s. 51 of the Courts of Judicature Act 1964. The CJA is a statute and not a piece of subsidiary legislation like the Rules of Court 2012. Therefore, when s. 17(8) of the CJA refers to "rules of court", it can only mean subsidiary legislation like the Rules of Court 2012 and not the CJA. To read the said provision otherwise would result in provisions of statutes being amended by a mere stroke of the pen and ignoring the provisions of art. 66 of the Federal Constitution on the legislative power of Parliament. This cannot be the intention of the August House when it passed the Covid-19 Act. Furthermore, it is a well-settled principle that a Practice Direction cannot override a statutory provision. See the Federal Court case of *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645; [2002] 1 MLJ 385, and the recent High Court case of *Zaidi Mohd Zain & Anor v. PP* [2021] 6 CLJ 905.

[9] *Ergo* the DPP's reliance on the said Arahan to justify the delayed lodging of the appeal is misplaced. All is not lost however, as the DPP can still make an application under s. 56 of the CJA for an extension of time to lodge the appeal and give reasons for the delay in doing so.

[10] In the event *cadit quaestio*.